use" must mean "use by the public." For, he argues, it could not mean public benefit or utility, because the people would not commit such a question to the courts, but to the legislature. This conclusion necessitates his dissenting from certain cases which uphold the exercise of eminent domain for mills, mines, and drainage, and at the same time forces him to consider uses to which the power has never yet been extended — such as the establishment of hotels and theatres — to be proper subjects for its exercise. While it cannot be seriously questioned that Mr. Lewis's conception, that "public use" merely means "use by the public," has at no time been the accepted idea of the object of eminent domain, and cannot therefore be the sense in which the words were used in the constitutions, it further seems very probable that Mr. Lewis's premise is likewise defective. Before the adoption of our constitutions the question of the expediency and public nature of the object of the power was for the legislature, and it would seem that the constitutions have not altered the legislative authority in this respect further than to empower the court to hold invalid an arbitrary exercise of this right by the legislature. Thus the court has but the same power to supervise legislative action that it has over the action of the jury, and no one would say a question which the jury must pass upon is a question for the court. Mr. Lewis's statement that a man's property consists of a bundle of rights, and that it consequently is an exercise of the power of eminent domain when by any public improvement his property is made less beneficial to him, seems also open to question. It must be confessed that the weight of authority in this country since the former edition of Mr. Lewis's book has been apparently in his favor. On careful examination, however, that these cases consistently support the bundle of rights view is not so manifest, and as that is certainly not the common-law conception of property, it would seem better to accord with sound principles to hold with the earlier cases that an injury to property other than by a physical invasion is not an exercise of the right of eminent domain.

In the second volume the subject of proceedings in eminent domain has been treated at length, and very satisfactorily. In this part of the work the alterations have been less than in the first volume, yet even here the increase of matter is noticeable, especially in the footnotes. The entire work will be of great service to the practitioner, as it may safely be said to represent, and, in the main, correctly, the present stage of the law of eminent domain. F. R. T.

A TREATISE ON THE LAW OF WATERS, including Riparian Rights, and Public and Private Rights in Waters, Tidal and Inland. Third edition. By John W. Gould. Chicago: Callaghan & Co. 1900. pp. cxvii, 956.

The value to the practitioner of a book on some special topic in the law such as the above treatise depends mainly upon two things: a clear and adequate statement of the propositions of law involved, and a complete and up-to-date marshalling of the authorities. It is gratifying, therefore, to have a new edition of this standard work, for during the last decade there have been many additions to the authorities on the subject and some decisions of considerable moment in the shaping of principles of law. The author in his preface remarks as of special

importance *Shively* v. *Bowlby*, which determines the power of the general government to control and dispose of tide lands in the territories, *Morris* v. *United States* as to the Potomac Flats, and various recent decisions upon the rights and liabilities of water companies. These last he has incorporated into a new section. In the main, however, the changes in this new edition are confined to slight additions to, or changes in, the text, and the insertion in their proper places of the decisions of the last nine years. By sticking closely to the subject in hand, Mr. Gould has avoided a pitfall into which many writers on special topics fall: namely, of swamping the valuable and special part of the work in a sea of allied topics, often carelessly and inadequately treated. Under "Public Waters" are considered property in tide-waters at common law and in this country, rivers and lakes, the public right of navigation, riparian rights and boundaries. In Part II., which deals with "Private Waters," there is a discussion of rights of riparian proprietors in the natural flow and condition of the stream, appropriation and rights acquired by priority, eminent domain, surface and subterranean waters, mines, contracts and covenants, prescription, severance of tenements, remedies, at law, in equity, and by statute. There is the usual table of cases cited — some eleven thousand — and an admirable index.

But few inaccuracies are to be found in the text. *Gould* v. *Hudson River R. R. Co.*, 6 N. Y. 522, is tentatively referred to as representing the New York law in regard to a riparian owner's rights of access; yet this decision was expressly overruled in *Rumsey* v. *N. Y. & N. E. R. R.* 133 N. Y. 79. Moreover, in the light of the recent case of *Scranton* v. *Wheeler* (see NOTES, 14 HARVARD LAW REVIEW, 451), the discussion of the doctrine of *Yates* v. *Milwaukee* (§ 149) will need some modification, though it is only fair to say that the construction put upon this case by the writer was that universally adopted — even by the Supreme Court itself — until the past year. The interesting decision that the back limit of riparian land is the watershed of the stream in question, *Bathgate* v. *Irvine*, 126 Cal. 135, does not seem to be noted, although the case is cited in support of several less important points. Another error is the citing of the same case, and no other, for apparently opposite sides of one proposition — and this in the same section (§ 120). *Heron* v. *The Marchioness*, 40 Fed. Rep. 330. But in proportion to the whole these mistakes are slight. In the main the work has that accuracy, clearness, and fulness of citations so necessary in a special treatise. It will undoubtedly prove highly valuable to the profession.

E. S. T.

THE SOURCES AND LITERATURE OF ENGLISH HISTORY FROM THE EARLIEST TIMES TO ABOUT 1485. By Charles Gross, Ph. D. London: Longmans, Green & Co. 1900. pp. xx, 618.

Mr. Gross has endeavored to do for English history what has been accomplished for Germany and France by Dahlmann, Waitz, Wattenbach, and Monod. He has placed within one treatise a full bibliography of all the printed materials which would be useful to any student of the legal, constitutional, political, social, and economic history of England, Ireland, and Wales. The selection is not restricted to books and papers directly historical in their character, but extends to treatises on archæology,